

NOT FOR PUBLICATION

CLOSED

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BANK OF AMERICA, N.A..

Plaintiff,

v.

MYRNA TAGAYUN, ROBERT S.
MANDELL a/k/a Mr. Tagayun,
DISCOVER BANK, et al.,

Defendants.

)
) Civil No. 05-2805

) Hon. Faith S. Hochberg, U.S.D.J.

) **OPINION AND ORDER**

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) Date: September 15, 2005
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HOCHBERG, District Judge:

This matter having come before the court upon Defendants Myrna Tagayun and Robert S. Mandell's Application for Emergency Relief ("Application"), which was filed on September 6, 2005, seeking an order staying the Court's Order to Remand the matter to the Superior Court of New Jersey, Chancery Division, Passaic County, which was entered on August 11, 2005; and

it appearing that prior to filing this Application, the Defendants filed a Notice of Appeal to the United States Court of Appeals for the Third Circuit on August 26, 2005; and

it appearing that this Court does not have jurisdiction to consider Defendants' Application, see Sheet Metal Workers' Int'l Assoc. Local 19 v. Herre Bros., Inc., 198 F.3d 391, 394 (3d Cir. 1999) ("It is well established that 'the filing of a notice to appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.'");

IT IS on this 15th day of September 2005,

ORDERED that Defendants' Application for Emergency Relief is **DENIED**, and it is further

ORDERED that this case remains **CLOSED**.

/s/ Faith S. Hochberg
Hon. Faith S. Hochberg, U.S.D.J.